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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
12/356,193	01/20/2009	David J. Pawson	14007-CIP5 FSP0264-C1	8363
88095	7590	01/23/2017	EXAMINER	
ARRIS Enterprises, LLC (FSP) 3871 Lakefield Drive Suwanee, GA 30024			WOOLCOCK, MADHU	
			ART UNIT	PAPER NUMBER
			2451	
			NOTIFICATION DATE	DELIVERY MODE
			01/23/2017	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DAVID J. PAWSON

Appeal 2015-007317
Application 12/356,193¹
Technology Center 2400

Before JOSEPH L. DIXON, JOHN A. EVANS, and KAMRAN JIVANI,
Administrative Patent Judges.

JIVANI, *Administrative Patent Judge.*

DECISION ON APPEAL

Appellant seeks our review under 35 U.S.C. § 134(a) of the Examiner's final decision rejecting claims 53–60 and 64, which are all the claims pending in the present application. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM-IN-PART.

¹ Appellant identifies ARRIS Enterprises Inc. and Alcatel/Lucent as the real parties in interest. App. Br. 2.

STATEMENT OF THE CASE

The present application relates to providing improved quality digital media in response to relaxed streaming constraints. Spec. 1:10–11.

Claim 53 is illustrative and are reproduced below.

53. A method of operating a stream server, the stream server causing data streams to be provided from one or more stored audio/visual files, the method comprising:

receiving a signal from a client device, said signal including an indication of a client requested presentation action that, when put into effect by the stream server, involves reducing a data rate of audio data of a first audio/visual stream being sent from the stream server to the client device or eliminating a transmission of the audio data of the first audio/visual stream to the client device;

implementing the client requested presentation action, said act of implementing the client requested presentation action including reducing the data rate of the audio data of the first audio/visual stream or eliminating the transmission of the audio data of the first audio/visual stream to the client device; and

determining an amount that a data rate of a second audio/visual data stream that is being sent concurrently with the first audio/visual data stream may be increased as a result of an effect on transmission bandwidth corresponding to the reduction in the data rate of the audio data of the first audio/visual stream or the elimination of the audio data of the first audio/visual stream.

The Rejections

Claims 53–60 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement.

Claims 59 and 64 stand rejected under 35 U.S.C. § 112, second paragraph, as indefinite.

Claim 64 stands rejected for non-statutory double patenting over claim 2 of Pawson '698 (US 7,512,698 B1; Mar. 31, 2009).

Claims 53, 55, and 58 stand rejected for non-statutory obviousness-type double patenting over claims 1, 4, and 10 of Pawson '698 and Beyda.

Claims 53, 58, and 60 stand rejected under 35 U.S.C. § 103(a) over Beyda et al. (US 6,453,336 B1; Sept.17, 2002) and Oz et al. (US 2007/0177632 A1; Aug. 2, 2007).

Claims 54 and 59 stand rejected under 35 U.S.C. § 103(a) over Beyda, Oz, and Howard et al. (US 2005/0259751 A1; Nov. 24, 2005).

Claims 55 and 56 stand rejected under 35 U.S.C. § 103(a) over Beyda, Oz, and Anderlind et al. (US 2010/0157825 A1; June 24, 2010).

Claim 57 stands rejected under 35 U.S.C. § 103(a) over Beyda, Oz, Anderlind, and Safadi (US 6,487,721 B1; Nov. 26, 2002).

Claim 64 stands rejected under 35 U.S.C. § 103(a) over Beyda and Maher (US 5,204,862; Apr. 20, 1993).

ANALYSIS

I. Claim Construction

Independent claims 53, 55, 58, and 64 each recite at least one “audio/visual stream.” The Examiner construes “each of these streams [as] including both audio *and* video data.” Ans. 2.

We apply the broadest reasonable interpretation of claim terms, consistent with the Specification, as would be understood by one of ordinary skill in the art. *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed.

Cir. 2004) (citations omitted). The Examiner’s construction requiring each claimed audio/visual stream to include both audio and video data is inconsistent with the claims and Specification, and is not, therefore, the broadest reasonable interpretation. For instance, claim 53 recites eliminating the audio portion of a first audio/visual stream. This claimed elimination results in an audio/visual stream containing only video, not audio and video as the Examiner’s construction would require. Further, the Specification discloses an embodiment where, in response to a mute operation, multiplexor 510 “filters and discards the identified audio packets” from a single audio/visual stream—namely SPTS 520—resulting in a stream containing “the original media presentation, but not any audio packets.” Spec. 13:15–22. Thus, contrary to the Examiner’s finding, we determine the claimed “audio/visual stream” encompasses a stream containing audio and/or visual data.

II. Written Description Rejection

The Examiner rejects claims 53–60 as lacking adequate written description in the Specification for the claimed multiple, concurrent audio/video streams. Final Act. 6–9. Appellant contends the Examiner errs in this rejection. App. Br. 9–11; Reply Br. 2–4.²

We are persuaded the Examiner has not established a lack of adequate written description in the Specification as a whole, such that an artisan of ordinary skill would fail to understand that the inventor had possession at that time of the later claimed subject matter. *See In re Kaslow*, 707 F.2d

² The Appeal Brief and Reply Brief each lack page numbers. We treat each Brief as if it were numbered sequentially beginning with its cover page.

1366, 1375 (Fed. Cir. 1983). In particular, we agree with Appellant because the Examiner’s findings are predicated upon a construction of the claimed “audio/video stream” not commensurate with our construction of that term as set forth above. *See supra* Section I. Applying our construction of the claimed “audio/video stream,” we find sufficient written description of the multiple, concurrent audio/video streams recited in claims 53–60 is set forth in the Specification at least on page 8, wherein the Specification discloses the “real-time transmission of digital media data streams” to a plurality of “clients (1-n)” via stream server 110 and “video pump 130 through the high bandwidth network 150.” Spec. 8:6–12.

Accordingly, we do not sustain the Examiner’s rejection of claims 53–60 under 35 U.S.C. § 112, first paragraph, for lack of written description support.

III. Obviousness Rejections

The Examiner finds claims 53–60 are not entitled to priority based on Pawson ’698 because the specification of Pawson ’698 lacks adequate written description of the claimed multiple, concurrent audio/video streams. Final Act. 3–5. Applying a priority date of January 20, 2009—the filing date of the present application—the Examiner finds Oz constitutes prior art to the present application and rejects claims 53–60 as rendered obvious by Oz in combination with various other references. *See* Final Act. 3, 14–26.

Appellant contends the Examiner errs in this rejection because the specification of Pawson ’698 “is identical to” the present Specification and contains adequate written description of the claimed multiple, concurrent audio/video streams. App. Br. 10.

We agree with Appellant because the Examiner's findings are predicated upon a construction of the claimed "audio/video stream" not commensurate with our construction of that term as set forth above. *See supra* Section I. Applying our construction of the claimed "audio/video stream," we find Pawson '698 contains the same disclosure relied upon above in determining that the present Specification contains sufficient written description of claims 53–60. *Compare* Pawson '698, 3:40–49 *with* Spec. 8:6–12; *see also supra* Section II.

With regard to independent claim 64, the Examiner accords claim 64 a priority date of September 1, 2000 based on Pawson '698. Final Act. 3. Appellant fails to address in the Appeal Brief the Examiner's rejection of independent claim 64 as obvious over Beyda and Maher. *See* App. Br. 11 (arguing only the obviousness rejections of claims 53–60). Arguments not made are considered waived. *See* 37 C.F.R. § 41.37(c)(1)(iv) (2014).

Accordingly, we do not sustain the Examiner's obviousness rejections of claim 53–60. We summarily sustain, however, the Examiner's obviousness rejection of independent claim 64.

IV. Indefiniteness Rejections

The Examiner rejects claims 59 and 64 under 35 U.S.C. § 112, second paragraph, as indefinite. Appellant fails to address this rejection in the Appeal Brief. Arguments not made are considered waived. *See* 37 C.F.R. § 41.37(c)(1)(iv) (2014). Accordingly, we summarily sustain the Examiner's rejection of claims 59 and 64 under 35 U.S.C. § 112, second paragraph, as indefinite.

V. Double Patenting Rejections

Claims 53, 55, and 58 stand rejected for non-statutory obviousness-type double patenting over claims 1, 4, and 10 of Pawson '698 and Beyda. Feb. 24, 2012 Non-Final Act. 4–8; Final Act. 11. Further, claim 64 stands rejected under non-statutory double patenting by claim 2 of Pawson '698. Feb. 24, 2012 Non-Final Act. 8–10; Final Act. 11. Appellant fails to address these rejections in the Appeal Brief.³ Arguments not made are considered waived. *See* 37 C.F.R. § 41.37(c)(1)(iv) (2014).

Accordingly, we summarily sustain the Examiner's non-statutory obviousness-type double patenting rejection of claim 64. We further summarily sustain the Examiner's non-statutory obviousness-type double patenting rejection of claims 53, 55, and 58.

DECISION

We affirm the Examiner's decisions rejecting claims 53, 55, 58, 59, and 64.

We reverse the Examiner's decisions rejecting claims 54, 56, 57, and 60.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED-IN-PART

³ We note that the Terminal Disclaimer, filed on June 4, 2012, was disapproved. Consequently, the Terminal Disclaimer did not obviate the rejection.